

April 19, 1995

P.S. Protest No. 95-08

SYSTEM ADVANTAGE, INC.

**Solicitation No. 102590-95-A-0014
factors**

DIGEST

Protest against the rejection as technically unacceptable of a proposal to provide contract computer personnel is sustained; rejection of proposal because it offered three individuals representing different skill levels instead of one individual for one position was arbitrary and lacked a reasonable basis.

DECISION

System Advantage, Inc., (SAI) protests the rejection of its proposal for award of a contract to provide computer service personnel in Washington, D.C.

Solicitation 102590-95-A-0014 was issued December 2, 1994, by Information Systems Purchasing at Postal Service headquarters, seeking proposals for the services of one senior local area network (LAN) engineer and one systems analyst in support of the Postal Service's office of International Postal Affairs (IPA). The requirement was set aside for small minority-owned and small woman-owned businesses, seven of which received solicitations.¹

Solicitation section A.1, Items and Prices, requested one fully loaded wage rate for each position for the base year and each of two option years.

¹ SAI had been an incumbent provider of similar services for IPA under a contract awarded using simplified purchasing procedures in which price had been the only criterion for award.

Section B.4 set out the requirements for the two positions. The requirements for the senior LAN engineer were stated in terms of minimums. The requirements for the systems analyst were stated as requirements.²

Section J.2 provided:

The Postal Service plans to award a time and material/labor hour type of contract under this solicitation, and all proposals must be submitted on this basis. Alternate proposals based on other contract types will not be considered.

Section J.4 provided:

a. Proposal Requirements. The following instructions establish the acceptable minimum requirements for the format and content of proposals:

1. The proposal must clearly describe the approach the offeror will follow in achieving the project's objectives and must list . . . all deliverables the offeror will provide.
2. The proposal must include a minimum of one resume for each position.
3. The proposal must also include subcontracting information . . .
4. Specific Instructions Regarding Price Proposals. The offeror must provide price breakdowns for any line item upon request.

Section M.2 stated that award would be made "to the responsible offeror whose proposal offers the best value to the Postal Service, (i.e. a combination of price, price-related factors, and/or other factors)" and further provided, in pertinent part:

The resumes submitted for each of the labor categories will be evaluated for Experience and Past Performance. One resume for each position will be evaluated for competency for the related position. Past experience and performance will be evaluated as it relates to and is defined in Section B. The technical evaluation of the resumes along with the total evaluated price will both be considered in determining the best value to the Postal Service. The closer the pricing of offerors[] proposals, the more important the technical evaluation of the resumes becomes.

b. Cost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.

² That is, the senior LAN engineer was described as having "minimum job qualifications . . . as follows. . . ." while the systems analyst was required to have "the following qualifications"

Finally, section M.4. stated in pertinent part:

The USPS will evaluate the offeror[']s compensation plan (salaries and fringe benefits) paid or furnished to professional employees. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Professional compensation will be evaluated to insure that it is not unrealistically low or not unreasonable in relationship to the various job categories, since it may impair the offeror[']s ability to attract and retain competent professional employees.

Offers were due January 3, 1995. Three proposals were received. SAI's proposal included the resumes of three individuals with different wage rates for the senior LAN engineer.³ The other offerors proposed only one individual per position. Evaluation of the technical proposals commenced on January 12. The contracting officer's statement describes the evaluation of SAI's proposal:

[I]t was not possible to evaluate SAI's proposal, because we were not at liberty to choose one of the three rates, proposed by SAI, when the other offerors provided the specified one set of labor rates for each of the two categories. [A contract specialist] called [SAI's representative during the week of January 23] and related that she could not evaluate the cost proposal based on the submission and required SAI to choose one set of the rates proposed. [SAI's representative] could not understand why [the Postal Service] would not allow our customer . . . to choose one of the levels. [The contract specialist] told [SAI's representative] that the requirement in the solicitation was for one set of rates and with three sets of rates proposed by SAI, we had no fair way of evaluating SAI's price/cost proposal.

SAI submitted a letter to the Postal Service responding to "the direction of the contracting officer" by naming one individual for the senior LAN engineer position and a second individual for the systems analyst position.⁴ The letter made no reference to the labor rates associated with either individual. SAI's proposal was evaluated as so revised.

The contracting officer's statement describes the evaluation as follows:

The resumes were reviewed and scored by the Evaluation Team. . . . In evaluating the resumes, the team looked for demonstrated experience

³ SAI's proposal listed the three individuals as "high level," "mid level," and "entry level" senior LAN engineers, respectively. While the contracting officer's statement indicates that SAI also proposed three different individuals for the systems analyst position, review of SAI's proposal establishes that SAI proposed only one systems analyst.

⁴ The individual proposed for the senior LAN engineer position was the one who had been identified as the mid level senior LAN engineer and the individual proposed for the systems analyst position was the one who had been identified as the entry level senior LAN engineer in SAI's initial proposal.

meeting the stated minimum. Any individual demonstrating qualifications exceeding the minimum did not eliminate an individual with minimum qualifications. For this solicitation, cost and technical were considered equal.

According to the contracting officer, "SAI met the minimal requirements for the two labor categories." Its technical score was the lowest of the three offerors. SAI was found to have offered the lowest prices, but the contracting officer considered the salaries underlying those prices⁵ to be "unrealistic and not conducive for stable employment."

Computer Experts' proposal was considered to offer the "best value" of the three because its technical score was only one point less than that of the highest-ranked offeror, while its price was significantly lower than that offeror's. No discussions were held with any other offerors. Award was made to Computer Experts on February 8; SAI's protest was received in this office on February 9.

The protest asserts that the "language of the solicitation as regards establishing the minimum job qualifications [was] quite general and involved a good deal of interpretation." As a result, SAI asserts that it offered three different senior LAN engineers, with varying levels of qualifications and experience, in an attempt "to delineate the possible differences in levels of ability that the statement of work allowed"

The protester characterizes the contract specialist as "summarily dismiss[ing SAI's] proposal as noncompliant with the solicitation" and objects to her direction that it "select one person for each position or [its] proposal would not be considered."

SAI asserts that the evaluation results would have been different and the Postal Service's interests better served "if our proposal [had been] allowed to be presented as submitted." SAI claims that it was "forced to narrow [its] offering, and the result was both the [Postal] Service and SAI lost."

Stating that it is "not the purpose of the USPS Procurement Manual [PM] to disallow information which increases the level of price competition," SAI asserts that its initial proposal more than met the requirements of the solicitation, thereby providing the most benefit to the Postal Service.

⁵ In order to facilitate a cost reasonableness determination, the solicitation asked for a cost breakdown of the two labor rates required, including the actual salaries to be paid the contractor's employees. SAI's actual salaries were significantly less than those of the other two offerors, and, in the view of the contracting officer, were also unrealistic or unreasonable compared to those of other contracts "currently in place."

We note an error in the contracting officer's comparisons of SAI's costs to those of the successful offeror, Computer Experts, Inc., which magnifies the difference between their perceived actual salaries. (The contracting officer's report does not include the breakdown of the other offeror's rates or details of the rates of the other contracts considered comparable.) SAI's hourly rates were subject to the addition of an 8 % or 9.6 % amount for fringe benefits; Computer Experts' hourly rates were not. A proper comparison would have adjusted SAI's hourly rates to reflect the fringe benefits, reducing the differences. Even as so adjusted, however, SAI's proposed salaries are a third less than those of Computer Experts.

In her statement responding to the protest, the contracting officer asserts that SAI "appears to be protesting the specifications of the solicitation which is untimely," citing PM 4.5.4 b.⁶ She states that if SAI "felt that the Postal Service had not been sufficiently precise in the solicitation, it would have been proper to protest the solicitation and require more precision."

As noted above, the contracting officer explains that it was impossible to evaluate SAI's original proposal because it proposed three individuals at three different hourly rates for the senior LAN engineer position and "we had no fair way of evaluating SAI's price/cost proposal." SAI's revised proposal was found unsatisfactory from the standpoint of price reasonableness because its intended actual salaries were too low. Further, the contracting officer points to SAI's low technical score and stresses that for this solicitation, cost and technical score were "considered equal."

In reply to the contracting officer's statement, the protester stresses its experience in providing personnel to the Postal Service and asserts:

SAI has very specific knowledge and in depth consideration of all aspects of IPA network operations. What to the procurement department may have appeared to be 'very basic requiring the submission of two labor categories and the hourly rates' . . . , was in our opinion a very general question that required some sophistication of approach in order to offer a full response.

SAI denies that it is protesting the solicitation terms; stating that it is in fact protesting that its proposal "was not accepted as submitted. . . ." SAI claims that it prepared a "superior proposal response; one that addressed the generality and vagueness of the request with a range of solutions." SAI points to Section J.4.a.2. (*supra.*) as indicating that it could submit more than one resume for each position, and asserts that its proposal provided flexibility because the Postal Service is likely to need "various levels of contract support. . . ."

SAI states that when it was informed that it would have to select and propose one individual for each position, it picked those who would offer the "best value" to the Postal Service "according to the [solicitation] instructions . . . cost, capabilities and circumstances

⁶ PM 4.5.4 b. states:

Protests based upon alleged deficiencies in a solicitation that are apparent before the date set for the receipt of proposals must be received by the date and time set for the receipt of proposals.

PM 4.5.4 d. establishes the timeliness requirements for protests other than against deficiencies in a solicitation:

In all other cases, protests must be received not later than ten working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 working days after award of the contract in question.

considered." SAI asserts that it picked the "middle" candidate (in qualifications) not the "most highly qualified individual." SAI denies that its proposed wages were unreasonably low, and asserts that at no time during its previous postal contracting experience were salaries "at all a cause for any disruptions" to performance.⁷

In conclusion, SAI states that it "will stand behind [its second] offer" since SAI's prices would save the Postal Service more than \$100,000, but asks that its "full and complete proposal" be reconsidered.

⁷ The contracting officer states that SAI had performed satisfactorily under its former contract, which involved services "similar in nature" to those solicited here, and that "the two [employees] performing the work changed once" during SAI's contract. The protester asserts that the first year of its former contract ended September 30, 1994, but the contract was extended three times. SAI asserts that there were no turnovers of employees during the initial year.

DISCUSSION

We do not agree with the contracting officer that SAI is untimely protesting against the terms of the solicitation. PM 4.5.4 b., footnote 6, *supra.*, governs protests against alleged deficiencies in a solicitation apparent before the proposal due date. See *Dataware Systems Lease, Inc.*, P.S. Protest No. 91-41, October 10, 1991. SAI is protesting the contract specialist's refusal to evaluate SAI's proposal as offering to supply, in the alternative, three different senior LAN engineers.⁸ It was not reasonably apparent from the face of this solicitation that the Postal Service would decline to evaluate an offer proposing alternative individuals for the senior LAN engineer position; SAI could not have realized a need to challenge its terms in that regard before the proposal due date.⁹ In light of section M.2's reference to "resumes submitted for *each* . . . labor categor[y]" and section J.4's reference to "a *minimum* of one resume for each position" (emphasis supplied), no offeror could know before the proposal due date that proposals would be excluded merely for supplying multiple resumes. SAI knew that its proposal would not be evaluated as submitted only when the purchasing specialist called to inform it during the week of January 23. Instead of challenging the terms of the solicitation, SAI is protesting that its proposal, as initially submitted, was improperly rejected as technically unacceptable. That protest is timely.¹⁰

This office will not substitute its judgment for that of the contracting officer or disturb her evaluation of an offer's technical acceptability unless it is shown to be arbitrary or in violation of procurement regulations. *Government Contract Advisory Services, Inc.; B & B General Contracting, Inc.*, P.S. Protest Nos. 93-21; 93-25, December 16, 1993. The purpose of our review is only to ensure that the determination of technical unacceptability has a reasonable basis. *Id.*; accord, *Cohlmlia Airline, Inc.*, P.S. Protest No. 87-41, October 30, 1987; accord *B&D Supply Company of Arizona, Inc.*, Comp. Gen. Dec. B-210023, 83-2 CPD 50, July 1, 1983. Here, the determination of technical unacceptability was arbitrary and unreasonable.

The contracting officer apparently relied on the fact that section A.1 provided space only for one wage rate to justify rejection of SAI's original proposal containing three wage rates for the senior LAN engineer position. Neither section A.1 nor any other portion of the

⁸ To the extent that SAI's proposal may have been intended to offer a mix of individuals to perform different parts of the senior LAN engineer services over the course of the contract, a SAI's reference to "flexibility" in meeting a requirement for "various levels of . . . support" could suggest, the contract specialist would have been correct that its offer could not be properly evaluated because there was no way to allocate labor hours for each skill level (and thus the proposed different prices) within the requirement.

⁹ SAI's use in its protest of terms such as "vagueness" and "generality" to describe solicitation requirements does not by itself make this a protest against the solicitation terms or otherwise change the results in this decision.

¹⁰ Although the contracting officer has not established the precise date of the contract specialist's telephone conversation, she has not alleged that it occurred more than ten working days before SAI's protest was received. Therefore, we consider the protest timely under PM 4.5.4 d.

solicitation, however, precluded an offeror from submitting alternative proposals as long as those proposals contemplated a time and materials/labor hour contract type. At worst, sections J.4.a.2 and M.2, read together, stand for the proposition that where multiple resumes were submitted for a position, the technical evaluators would decide which one of the resumes would be selected for evaluation.

SAI also objects to having had to decide how to revise its offer without an adequate explanation of the basis on which its revised offer would be evaluated. A solicitation must "fairly advise prospective offerors of the basis on which their offers will be considered for award." *Dawson Construction Co., Inc.*, P.S. Protest No. 91-47, September 25, 1991; *International Technology Corporation*, P.S. Protest No. 89-21, May 8, 1989. An offeror must have notice of the that by themselves could eliminate the offeror from competition. See, e.g., *Hratch Kouyoumdjian & Associates, Inc.*, P.S. Protest No. 93-03, April 16, 1993. In this regard, this solicitation was defective in a way that renders SAI's response to it quite understandable. Neither the solicitation terms nor the contracting officer's statement indicate how the technical evaluation was to be accomplished.

The solicitation failed to disclose to offerors the factors that would be relevant in assigning technical scores to the resumes, specifically with respect to whether the Postal Service preferred more highly skilled and experienced personnel over minimally skilled candidates.

Indeed, the record in this protest evidences uncertainty in that respect. The narrative of the evaluation process in the contracting officer's statement, *supra*, p. 4, suggests that more highly qualified candidates would not be afforded additional technical credit,¹¹ but that suggestion is belied by the fact that the other offerors were rated higher technically than SAI when the contracting officer acknowledges that SAI's candidates met the minimum requirements for the positions.

Similarly, the contracting officer's contention that price factors were weighted equally with technical factors is inconsistent with the limited guidance which the solicitation provided.

The solicitation stated that the technical evaluation and price "will both be considered"; that "[c]ost/price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price"; and that the technical evaluation will become more important in evaluating closely priced proposals. We understand these provisions, taken together, to indicate that price was to be *more* significant than the technical scores, except that between similarly priced proposals, the Postal Service would prefer the one offering more qualified candidates. That scheme, while reasonable, is inconsistent with the contracting officer's account of the manner in which the award decision was made. Under the stated evaluation scheme, award should have been made on the basis of price to the lowest priced technically acceptable offeror (subject to the determination of the realism of its costs), not, as here, on the basis of a technical/price tradeoff which did not involve closely priced proposals.

SAI also challenges the contracting officer's determination that its proposed salaries were unsatisfactory under the cost realism requirement of section M.4. Ordinarily this office would not overturn a contracting officer's determination that costs are unrealistically low

¹¹ As evidenced by the reference to "demonstrated experience meeting the stated minimum" and the contention that an individual exceeding the minimum would not "eliminate an individual with minimum qualifications."

unless that determination clearly was unreasonable. *Cf. AMR Distribution Systems*, P.S. Protest No. 92-36, October 2, 1992. However, even though the contracting officer's view that SAI's proposed salary for its mid level engineer was too low does not strike us as unreasonable, she did not relate her concerns to SAI, thereby failing to conduct meaningful discussions with the protester. Once discussions are opened,¹² they must "[a]dvise the offeror of deficiencies in its proposal, in terms of Postal Service requirements" PM 4.1.5 g.3. The contracting officer should have told SAI that she was concerned that its proposed salaries would jeopardize retention of qualified personnel. See *Redstone Technical Services; Dynamic Science, Inc.*, Comp. Gen. Dec. B-259222.2, B-259224.2, March 17, 1995, 1995 WL 153633 (C.G.). (Protests were sustained in part because discussions were not meaningful due to the agency's failure to inform the protesters of its concern that their labor rates could "impact performance in terms of recruitment and retention of personnel.").

In combination, the flaws in this procurement support a finding that SAI's interpretation of and response to the solicitation were reasonable under the circumstances while the contracting officer's actions were not.

The question of SAI's remedy remains. As we stated in *AMR Distribution Systems, Inc.*, *supra*:

Since award has been made and performance begun, we are limited in the relief we can grant. When contract performance is underway, whether to require termination of the contract depends on consideration of such factors as the seriousness of the procurement deficiency, the degree of prejudice to unsuccessful offerors or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the Government, the urgency of the requirement, and the impact of termination on the accomplishment of the agency's mission.

Here, we cannot establish that absent the errors, SAI would have won the contract. It is axiomatic that a protester must have suffered quantifiable harm in order to be the beneficiary of a directed remedy. *TRW Financial Systems, Inc.*, P.S. Protest No. 91-19, May 29, 1991. It is not clear that either of SAI's two unevaluated alternative proposals would have offered the best value to the Postal Service, or, given its defense of its salary levels, that SAI would have responded satisfactorily to the contracting officer's concerns about cost realism. Further, both Computer Experts, which was not at fault in this case, and the other offeror received high technical scores. We therefore decline to order termination of Computer Experts' contract.

However, we cannot ignore the seriousness of the mistakes that occurred here, which call

¹² The contract specialist's telephone conversation with SAI during the week of January 23 constituted "discussion" with SAI because it "provide[d] the offeror an opportunity to revise its proposal" (PM 4.1.5 a.3.) as reflected by its substitution of personnel for the systems analyst position. (The conversation was not a mere "clarification" intended to eliminate "minor irregularities, informatics, or apparent clerical mistakes." PM 4.1.5 a.2.) Once discussions were held with SAI, the contracting officer further erred in failing to hold discussions with the other offerors within the competitive range. PM 4.1.5 g.1.

into question the integrity of the process. *AMR Distribution Systems, Inc., supra*. Since the contract contains two one-year options which have not yet been exercised, the contracting officer is hereby directed not to exercise those options, but to resolicit for any required services for the option years. SAI and all other offerors may respond to that solicitation. *Id.*

The protest is sustained to the extent indicated.

William J. Jones
Senior Counsel
Contract Protests and Policies